



Indiana Department of Education

SUPPORTING STUDENT SUCCESS

MEMORANDUM

TO: State Board of Education

FROM: Pat Mapes, Director, Office of Educator Licensing and Development

SUBJECT: Background Checks, License Revocation and Immunity – [Public Law 121-2009](#)
(House Enrolled Act 1462)

DATE: May, 27, 2009

Indiana Code 20-28-5-8 enumerates certain crimes that lead to revocation of a teaching license once a conviction has been determined. Prosecutors and school corporations must report convictions to the Department of Education. Effective July 1, 2009, possession of child pornography is added to the list of crimes that lead to license revocation and school corporations have the additional duty to report any final action in relation to an employee who engaged in any offense listed in the law.

The Department of Education is establishing a web component that will allow school officials to report such offenses through a secure online form. Once they have been verified, these individuals' names will be made public so that any person may search the database for information concerning employees or former employees.

In addition to this new reporting requirement, school corporations, charter schools and accredited nonpublic schools will now be responsible for completing an extensive criminal history background check before they employ someone to work in their schools. IC 20-26-2-1.5 and IC 20-26-5-10. This requirement will mean that schools will search local, state, and out of state records, including sex offender registries. The applicant is responsible for all costs associated with obtaining the expanded criminal history check. The Office of Educator Licensing will no longer complete background checks as a requirement for licensure as the local schools now have that duty as of July 1, 2009.

Another area in House Enrolled Act 1462 that is not within the area of licensure but is important to report is the school discipline component, IC 20-33-8-8. School Corporation certified personnel have qualified immunity with respect to a disciplinary action taken to promote student conduct if the action taken is in good faith and is reasonable. The Attorney General and Superintendent of Public Instruction annually will notify school personnel of their immunity

Attachments: Statutory excerpts

IC 20-28-5-8[EFFECTIVE JULY 1, 2009]

Sec. 8. (a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

- (1) The state superintendent.
- (2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority if a nonpublic school employs the licensed employee.
- (3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(b) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the individual knows that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (c), or when the governing body or equivalent authority for a nonpublic school takes any final action in relation to an employee who engaged in any offense listed in subsection (c).

(c) The department, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the department to have been convicted of any of the following felonies:

- (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.
- (2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.
- (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (5) Child molesting (IC 35-42-4-3).
- (6) Child exploitation (IC 35-42-4-4(b)).
- (7) Vicarious sexual gratification (IC 35-42-4-5).
- (8) Child solicitation (IC 35-42-4-6).
- (9) Child seduction (IC 35-42-4-7).
- (10) Sexual misconduct with a minor (IC 35-42-4-9).
- (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.
- (12) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- (14) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (15) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- (18) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).
- (19) Possession of child pornography (IC 35-42-4-4(c)).

(d) A license may be suspended by the state superintendent as specified in IC 20-28-7-7.

(e) The department shall develop a data base of information on school corporation employees who have been reported to the department under this section.

IC 20-26-2-1.5 [EFFECTIVE JULY 1, 2009]

Sec. 1.5. "Expanded criminal history check" means a criminal history background check of an individual that includes:

- (1) a:
 - (A) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided;
 - (B) search of the records maintained by all counties or similar governmental units in another

state, if the individual who is the subject of the background check resided in another state; and

(C) check of:

- (i) sex offender registries in all fifty (50) states; or
- (ii) the national sex offender registry maintained by the United States Department of Justice; or

(2) a:

(A) national criminal history background check (as defined in IC 10-13-3-12); and

(B) check of:

- (i) sex offender registries in all fifty (50) states; or
- (ii) the national sex offender registry maintained by the United States Department of Justice.

IC 20-26-5-10 [EFFECTIVE JULY 1, 2009]

Sec. 10. (a) A school corporation, including a charter school and an accredited nonpublic school, shall adopt a policy concerning criminal history information for individuals who:

(1) apply for:

(A) employment with the school corporation; or

(B) employment with an entity with which the school corporation contracts for services;

(2) seek to enter into a contract to provide services to the school corporation; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a charter school and an accredited nonpublic school, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section must require that the school corporation, charter school, or accredited nonpublic school conduct an expanded criminal history check concerning each applicant for noncertificated employment or certificated employment before or not later than three (3) months after the applicant's employment by the school corporation, charter school, or accredited nonpublic school. Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation, charter school, or accredited nonpublic school to request an expanded criminal history check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation, charter school, or accredited nonpublic school may require the individual to provide a set of fingerprints and pay any fees required for the expanded criminal history check. Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's expanded criminal history check. The failure to answer honestly questions asked under this subsection is grounds for termination of the employee's employment. The applicant is responsible for all costs associated with obtaining the expanded criminal history check. An applicant may not be required by a school corporation, charter school, or accredited nonpublic school to obtain an expanded criminal history check more than one (1) time during a five (5) year period.

(c) Information obtained under this section must be used in accordance with law.

IC 20-33-8-8 [EFFECTIVE JULY 1, 2009]

Sec. 8. (a) Student supervision and the desirable behavior of students in carrying out school purposes is the responsibility of:

- (1) a school corporation; and
- (2) the students of a school corporation.
- (b) In all matters relating to the discipline and conduct of students, school corporation personnel:
 - (1) stand in the relation of parents to the students of the school corporation;
 - (2) have the right to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system, subject to this chapter; and
 - (3) have qualified immunity with respect to a disciplinary action taken to promote student conduct under subdivision (2) if the action is taken in good faith and is reasonable.
- (c) Students must:
 - (1) follow responsible directions of school personnel in all educational settings; and
 - (2) refrain from disruptive behavior that interferes with the educational environment.

IC 20-33-8-9 [EFFECTIVE UPON PASSAGE]

Sec. 9. (a) This section applies to an individual who:

- (1) is a teacher or other school staff member; and
- (2) has students under the individual's charge.

(b) An individual may take any action that is reasonably necessary to carry out or to prevent an interference with an educational function that the individual supervises.

(c) Subject to rules of the governing body and the administrative staff, an individual may remove a student for a period that does not exceed five (5) school days from an educational function supervised by the individual or another individual who is a teacher or other school staff member.

(d) If an individual removes a student from a class under subsection (c), the principal may place the student in another appropriate class or placement or into inschool suspension. The principal may not return the student to the class from which the student was removed until the principal has met with the student, the student's teacher, and the student's parents to determine an appropriate behavior plan for the student. If the student's parents do not meet with the principal and the student's teacher within a reasonable amount of time, the student may be moved to another class at the principal's discretion.